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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/533,516	09/21/2005	Hans W. Schmid	2923-708	2283

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EXAMINER	
MERCIER, MELISSA S	

ART UNIT	PAPER NUMBER
1615	

NOTIFICATION DATE	DELIVERY MODE
03/18/2010	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

PTO-PAT-Email@rfem.com

Office Action Summary	Application No.	Applicant(s)	
	10/533,516	SCHMID, HANS W.	
	Examiner	Art Unit	
	MELISSA S. MERCIER	1615	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *25 November 2009*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-13 and 20-27* is/are pending in the application.

4a) Of the above claim(s) *1-13* is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *20-27* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Summary

Receipt of Applicants Remarks and Amended Claims filed on November 25, 2009 is acknowledged. Claims 1-13 and 20-27 are pending in this application. Claims 1-13 remain withdrawn from consideration.

Withdrawn Rejections/Objections

Claim Rejections - 35 USC § 112

The rejection of claims 20-25 under 35 U.S.C. § 112, first paragraph, as failing to comply with the written description requirement has been withdrawn in view of Applicants amendment to claim 20 to incorporate the specific derivatives disclosed in the specification.

Claim Rejections - 35 USC § 103

The rejection of claims 20-25 under 35 U.S.C. 103(a) as being unpatentable over Pierpaoli et al. (US Patent 4,746,674) in view of Matsumoto (US Patent 5,637,606) and further in view of Hanada et al. (US Patent 5,656,264) has been withdrawn in view of a teaching away of the use of gingko biloba by Matsumoto for the treatment of alopecia.

Newly Applied Rejections/Objections

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 20-27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pierpaoli et al. (US Patent 4,746,674)in view of Noser et al. (US 2002/0034485) and further in view of Kondo et al. (JP410287531A, Abstract).

Pierpaoli discloses a method of treating the skin and/or scalp of a human host by the administration of a melatonin composition in order to improve the cosmetic or physical appearance of the skin and/or scalp (abstract). The composition is disclosed as being topically applied to the skin (column 1, lines 8-11). Pierpaoli discloses the composition is used for the rejuvenation of partially degenerated hair follicles through the use of melatonin compounds, homologues, and derivatives (column 1, lines 20-21).

Regarding claim 21, the composition can be used for the treatment of drug induced or toxic alopecia (column 11, lines 40-43).

Regarding claims 22-23, the disclosure of humans encompasses both men and women.

Regarding claims 24-25, the relative concentration of melatonin is 10^{-4} to 1% of an ointment (column 12, lines 63-65). It is additionally disclosed that the amount of melatonin administered can be altered based on the individual and the specific needs of that individual (column 7, lines 42-45).

Pierpaoli does not disclose the use of biotin or gingko biloba.

Noser discloses hair tonic for prevention or treatment of hair loss comprising biotin (abstract).

The combination of Pierpaoli and Noser do not disclose the use of gingko biloba.

Kondo discloses a cosmetic formulation comprising gingko biloba (abstract).

The skilled artisan would have a reasonable expectation of making a composition comprising melatonin, gingko biloba and biotin since the cited references all disclose the therapeutic properties of each component.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have incorporated gingko biloba and biotin into the composition of Pierpaoli because Kondo discloses gingko biloba promotes and normalizes the function of hair and head skin and makes them healthy and Noser discloses the use of biotin influences the quality of the hair positively. Biotin is the vitamin of keratinization, (i.e. an improved supply of biotin to the hair organ improves keratinization). Biotin particularly increases the strength and tear resistance and generally the resistance of hair to outside or environmental influences and stressful treatments in the case of fine hair but also significantly for normal hair. Biotin strengthens the anchoring of the bottom of the hair in the scalp. As a result there is a decrease in the number of hairs falling out and the number lost is stabilized at a minimum value (paragraph 0024-0025).

Furthermore, it has been held that combinations of two or more compositions each of which is taught by the prior art to be useful for the same purpose in order to form a third composition which is to be used for the very same purpose. In re Susi, 58 CCPA 1074, 1079-80, 440 F.2d 442, 445, 169 USPQ 423, 426 (1971); In re Crockett, 47 CCPA 1018, 1020-21, 279 F.2d 274, 276-77, 126 USPQ 186, 188 (1960). As the court explained in Crockett, the idea of combining them flows logically from their having

been individually taught in prior art. Therefore, since each of the references teaches melatonin, biotin, and ginkgo are effective ingredients in compositions for the treatment of hair loss, it would have been obvious to combine them with the expectation that such a combination would be effective in promoting hair growth. Thus, combining them flows logically from their having been individually taught in prior art.

Response to Arguments

Applicant's arguments have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of Pierpaoli et al. (US Patent 4,746,674) in view of Noser et al. (US 2002/0034485) and further in view of Kondo et al. (JP410287531A, Abstract).

Regarding applicants argument regarding the rejection being based on inadmissible hindsight, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

Conclusion

Due to the new grounds of rejection presented in this office action, this action is made Non-Final. Any inquiry concerning this communication or earlier

communications from the examiner should be directed to MELISSA S. MERCIER whose telephone number is (571)272-9039. The examiner can normally be reached on 8:00am-4:30pm Mon through Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert A. Wax can be reached on (571) 272-0623. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Melissa S Mercier/
Examiner, Art Unit 1615

/Carlos A. Azpuru/
Primary Examiner, Art Unit 1615